UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 19

SIS NORTHWEST, INC.

Employer

and Case 19-RC-15066

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS, AND HELPERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended ("the Act"), a hearing was held before a hearing officer of the National Labor Relations Board ("the Board"). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record¹ in this proceeding, I make the following findings and conclusions.²

I. SUMMARY

SIS Northwest, Inc. ("the Employer") is engaged in fabricating and building custom designed steel installations at its facilities located in Sedro Woolley, Washington. The International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers, AFL-CIO ("the Petitioner") seeks to represent a unit of all production and maintenance ("production") employees and the QA/QC inspector ("inspector") employed by the Employer at its 913 Maple Street facility, including the Skagit Industrial Park Building A1 facility.

¹ The Employer and Petitioner timely submitted briefs, which I have carefully considered.

² The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Employer contends that the petitioned for production employees do not share a sufficient community of interest with the inspector and that team leaders and senior team leaders are statutory supervisors and, therefore, should be excluded from the unit.

Petitioner argues that the inspector shares a community of interest with the production employees and that the Employer has failed to establish that the team leaders and the senior team leaders possess supervisory authority as defined in Section 2(11) of the Act. Accordingly, the Petitioner asserts that the inspector, the team leaders, and senior team leaders should be included in the unit.

I have carefully reviewed and considered the record evidence and the arguments of the parties at the hearing and in their post-hearing briefs. I find that the inspector should be included in a unit with production employees because he shares a sufficient community of interest with the production employees. I further find that the record fails to establish that the team leaders and senior team leaders possess supervisory authority. Accordingly, the inspector, team leaders, and senior team leaders shall be included in the petitioned-for unit.

Below, I have summarized the record evidence detailing the Employer's operations and the inspector's, team leaders' and senior team leaders' duties. My analysis of the record evidence, application of Board law, and conclusion follow the summary of evidence. The final section sets forth the direction of election.

II. RECORD EVIDENCE

As indicated above, the Employer fabricates and builds custom designed steel installations. Each project is unique. Examples of projects include bridges and fenders, the latter of which are used to cushion the arrival of ferry boats at terminals. Upon identifying a project on which to bid, the Employer estimates the cost of the project³ and submits a bid. If awarded the bid, the Employer prepares detailed drawings required for the fabrication process. After the client and/or its engineer approve the drawings and the materials are purchased, the fabrication and assembly work begins at the Employer's facilities. Upon completion of a project, the Employer ensures that the installation meets its quality control/assurance standards prior to shipping the installation to the project site.

Project fabrication occurs at either the main shop located on Maple Street or the A-1 shop. The main shop is the smaller of the two shops and is located next to the Employer's offices. Intricate and complex parts are cut and built in the main shop and transferred to the A-1 shop for integration into larger installations. The A-1 shop is located in a leased facility in the Skagit Industrial Park located approximately three quarters of a mile from the main shop.

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³ The cost of the project includes time and material.

The Employer's chain of command is as follows: production employees report to team leaders or to senior team leaders. Team leaders report to the shop superintendent. Senior team leaders report to the fabrication manager, but also coordinate their work through the shop superintendent. The shop superintendent reports to the fabrication manager and the project manager. The fabrication manager and the project manager are directly responsible for executing projects according to specifications and report to the operations manager. The operations manager reports to the president. Additionally, the inspector reports to the QA/QC manager, who reports directly to the president.

The record is unclear regarding the number of employees in the bargaining unit found appropriate herein.

A. The QA/QC Inspector

1. Job Functions and Working Conditions

The Employer is certified by both the American Welding Society ("AWS") and the American Institute of Steel Construction ("AISC"). In order to maintain its certification from both AWS and AISC,⁶ the Employer is required to maintain specific quality standards. To that end, the inspector continually assesses production employee workmanship to ensure it conforms to contract specifications.

There is a QA/QC office in both shops. The record is silent regarding precisely how much time the one inspector spends in his two offices versus out on the production floor. Further, the record provides no details as to the nature of the work performed in the inspector's offices. The inspector can, however, take breaks in the privacy of his offices or take breaks in the break room used by all employees. Production employees do not have a separate office.

2. Contact, Integration, and Interchange With Other Employees

The inspector works primarily at the A-1 facility because the majority of work is performed there, but he also works at least the equivalent of 1 day a month in the main shop. Additionally, the QA/QC manager works in the main shop, where the inspector often goes to report to the QA/QC manager.

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⁴ The remaining balance of the Employer's job classifications -- estimators, draftsperson, and office assistant -- also report directly to the operations manager. However, the Union did not include the estimators, draftsperson, or office assistant in the petitioned-for unit.

⁵ The parties stipulated that the president, QA/QC manager, operations manager, fabrications manager, shop superintendent, and project manager are excluded from the unit and are supervisors as defined by the Act. Thus, those positions shall be excluded from the petitioned-for unit.

⁶ AISC performs an annual audit to ensure that employees have the ability to perform adequate work and that the Employer satisfies all appropriate criteria.

The inspector does not perform production work; rather, he is present on the shop floor while production employees are working. The inspector maintains all paperwork pertaining to the QA/QC review process. Accordingly, the inspector verifies that production employees routinely sign off on the "in process" inspection sheets documenting that the production employees have evaluated that their work was in conformity with predetermined specifications. Thus, completed projects have written documentation showing multiple inspections conducted by employees and/or the inspector. Additionally, the inspector has the ability to perform the final inspection of completed work.

Besides monitoring employees' participation in the QA/QC review process, the inspector has the authority to stop work on a project and "red tag" it if it does not appear to comport with quality standards. A red tag provides notice to all employees that work on a project or part of a project must cease until corrective action is taken because the work was deemed insufficient. The inspector meets with the QA/QC manager to determine the proper course of action to remedy defective work.

The inspector also has the authority to request that an employee redo insufficient work. Additionally, the inspector is authorized to report concerns regarding production employees' work performance to the QA/QC manager. The QA/QC manager, in turn, discusses performance concerns with production managers to determine if re-education or corrective action is necessary to improve work performance. The record evidence, however, contains no specific examples or documentation of instances when the inspector's concerns regarding work performance resulted in either re-education or corrective action for a production employee.

Further, production employees are required to participate in the Employer's quality review program. Other employees, such as team leaders, are charged with the responsibility of ensuring quality and are similarly required to red tag inadequate work or report concerns about work performance that might trigger re-education and/or corrective action. However, team leaders do not have the authority to perform the final inspection, reject work, or require an employee to redo work.

The current inspector formerly worked as a production employee and the former inspector now works as a production employee.

3. Wages and Benefits

The inspector negotiates his wages and benefits with the QA/QC manager. Production employees do not have the latitude to negotiate their wages and benefits with managers because they are placed in wage/benefit groups based on a determination of their skill and ability. The hourly rate of pay for an inspector ranges between \$22.00/hour to \$24.00/hour while the hourly rate of pay for production employees, such as the welders and fitters, ranges between \$18.00/hour to \$19.00/hour, with the team leaders making slightly more. Note, however, that the exact hourly rate paid to any team leader is not specified in the record.

As for health insurance, the Employer pays a percentage of the inspector's and his spouse's health insurance, which is similar to the coverage provided to management personnel. In contrast, the Employer covers insurance for production employees only, but not for their children or spouses.

4. Training and Skills

The inspector receives internal training on how to properly inspect the work.⁷ The record is silent as to the nature and extent of training.

5. Supervision

The QA/QC manager supervises the inspector. Production employees report to their team leaders and team leaders report to the Superintendent.

6. Work Rules

The inspector generally works the same hours as production employees, but the inspector has the ability to work additional hours to finish work assignments.

7. <u>Bargaining History</u>

There is no evidence of any collective-bargaining history at the Employer's facility.

B. Team Leaders and Senior Team Leaders⁸

1. <u>Background</u>

For each project, a contract review team ("CRT") devises a plan for manufacturing and/or building an installation. CRT members are primarily upper management. After the CRT develops the project plan, the project is broken down into tasks and assigned to teams. The superintendent puts together teams and assigns tasks. Task assignments are based on who has the requisite skills to perform the tasks. Each team has different skill capabilities. Typically, a team is either a fitting team or a

⁷ The Employer asserts in its brief that the inspector receives specialized training from outside training sources, but none are specified in the record. Additionally, the Employer states in its brief that the inspector possesses a certified welding inspection certificate, which is not a fact indicated in the record.

⁸ President John Norton and Operations Manager Stephen Parfomchuk testified on behalf of the Employer. Norton's testimony was limited to providing background information about the Employer. Parfomchuk was the Employer's main witness and provided all testimony in support of its arguments that the inspectors, team leaders, and senior team leaders should be excluded from the unit. Team leader Brian Opland and temporary team leader David Lisle testified on behalf of the Union.

welding team. Teams are comprised of helpers, fitter helpers or welder helpers, and journeymen fitters or welders. Helpers require more supervision than classifications such as journeyman. A team leader is either a welder or a fitter and generally performs the same job every day. Accordingly, welding team leaders work in the welding area and fitting team leaders work in the fitting area. The degree of complexity of a project can vary from day to day. Additionally, a project might require several teams to simultaneously perform different tasks.

There are two senior team leaders and six team leaders. Senior team leaders work in the main shop performing more specialized work while the team leaders work in the A-1 shop. The number of team members working for senior team members varies depending on need. Because senior team leaders' work is more complicated than team leaders, they generally provide more oversight over their team members. Additionally, senior team leaders work more independently and report directly to the fabrication manager while the team leaders report to the superintendent. There is no higher level supervisor working at the main shop because the fabrication manager, project manager, and superintendent work at the A-1 shop. However, the president, operations manager, and QA/QC manager all work in the offices adjoining the main shop. Regardless, senior team members' daily duties do not vary from the team leaders. Accordingly, most of the record evidence regarding the alleged supervisory status of the team leaders and senior team leaders comes from the vantage point of the team leader.

Usually, there are four production employees and a team leader per team, but the number of production employees assigned to a team varies based on project demands. Team leaders are essentially higher level journeymen and are selected based on craftsmanship, knowledge, and experience. Team leader Brian Opland⁹ testified that 90% to 100% of his work-time is spent performing production work and that, as a team leader, he performs the same percentage of production work that he did before becoming a team leader. Opland further testified that his current job duties do not differ from when he worked as a welder fitter. He also testified that the Employer never told him he had supervisory authority; indeed, Employer witnesses provide no testimony to dispute this.

2. General Responsibilities

Team leaders serve as the superintendent's eyes and ears on the floor because the superintendent cannot be everywhere at once. The Employer contends that team leaders act for and on behalf of the superintendent by ensuring that the superintendent's directives are upheld. For example, team leaders make sure daily production time targets are achieved. The record, however, does not specify how team leaders operate to ensure production goals are met and no documentation was provided in this regard.

 $^{^9}$ Brian Opland has worked for the Employer for 1 $\frac{1}{2}$ years and has worked as a team leader for 4 months.

Because there are multiple ways to accomplish a task, team leaders are responsible for determining the best approach to completing a task and directing team members accordingly. Additionally, team leaders ensure that the production process is being followed. Specifically, upper management creates a process flow chart for production, which dictates the order in which parts are built or fitted. Typically, an upper level manager determines the process flow chart because he knows the overall production picture and is aware of the contract requirements. On small, simple projects, however, team leaders have the authority to decide the order in which tasks are performed. The record does not provide any specific examples of times when the team leader decided the order of tasks. Team leader Opland testified that he has never decided the order in which tasks should be performed. Indeed, on small and simple projects, team members can look at the job and readily determine their responsibilities.

3. Hiring

Employer witness Operations Manager Parfomchuk testified that team leaders can recommend employees for hire and even contact people and suggest that they apply to work for the Employer. However, the record contains no examples of team leaders recommending any employees for hire. In addition, team leader Opland testified that he had no involvement in hiring employees or interviewing employees. Moreover, Opland has never recommended that the Employer either hire or not hire an applicant. Typically, a team leader does not participate in the interview process. All team members can recommend individuals for hire but a team leader carries more weight than, for example, a welder helper, because a team leader is a journeyman level employee with more technical knowledge. Indeed, Opland testified that the Employer informed all production employees that it was looking for applicants and encouraged them to recommend anyone they knew that would be interested in working for the Employer. The record is silent as to the weight given by the Employer to such recommendations.

4. Transfer

Team leaders advise the superintendent if they need additional team members or if they have too many team members, and the superintendent determines whether it is necessary to adjust the workforce. Team leader Opland testified that he had never been given the authority to transfer an employee from one team to another and he had never been involved in transferring an employee from one team to another team. In fact, Opland described an incident occurring the week of February 11, 2008, in which the superintendent reassigned three of his team members to a different team without his knowledge or input.

¹⁰ The record references a team leader by the name of "Gabe" sitting in on an interview but provides no other specific details other than the fact that he did not conduct the interview.

5. <u>Discipline</u>

The Employer has a progressive discipline policy. First, a verbal warning is given for an infraction. The verbal warning is memorialized in writing and placed in the warned employee's file. Accordingly, other supervisors will then know that the employee has already received a verbal warning so that future violations will result in a written warning. Written warnings are signed by both the warned employee and the manager issuing the written warning and placed in the employee's file. After receiving a written warning, future violations could lead to a final warning, which triggers a decision making process to evaluate whether the conduct warrants termination.

Team leaders have the authority to advise the superintendent or the fabrication manager of conduct warranting written discipline. However, team leader Opland testified that it was his impression that the superintendent had the authority to discipline but he was not sure.

Because the Employer wants to ensure that discipline is issued properly, only upper management is permitted to issue written warnings. Purportedly, when investigating alleged discipline, the superintendent will talk to the team leader and take his viewpoint into consideration. The Employer asserts that the superintendent has the authority to act on the team leader's recommendation with or without an additional investigation. However, the Employer's witness, Operations Manager Parfomchuk, had no direct knowledge of how often the superintendent acted directly on the team leader's recommendation or how often the superintendent conducted an independent investigation. Additionally, the record does not provide any examples of where the superintendent acted on the team leader's recommendation without conducting an independent investigation, nor does the record reflect instances where the superintendent conducted an investigation. Further, the record does not contain any specific examples or documentation of instances where a team leader participated in the discipline process. The only specific example regarding the issuance of discipline is Opland's testimony discussing a written warning he received from the fabrications manager for tardiness. At the time Opland received the written warning, he was a team leader.

According to the Employer, team leaders have the authority to issue oral warnings. Apparently, after issuing an oral warning, the team leader reports the oral warning to the superintendent and the superintendent reduces the oral warning to writing for placement in the employee's personnel file. Team leaders issue oral warnings for matters such as inadequate welding or tardiness. However, the record contains no specific examples or documentation of team leaders issuing oral warnings. Moreover, the warnings carry no recommendations.

¹¹ It is clear from the context of the testimony that the witnesses used the word "verbal" rather than the correct word "oral" to describe the type of warning the team leaders purportedly are authorized to issue.

Additionally, team leaders can correct team members' job performance and, as part of the QA/QC program, can red tag poor quality work. After an employee's work receives a certain number of red tags, he can be terminated or lose his certification until he can be retrained. According to Opland, he has never issued any form of discipline including verbal warnings and he is not aware of any team leader issuing discipline.

6. Coaching

A team leader is responsible for coaching team members struggling with workmanship. For example, if a welder is struggling with velocity, poor weld quality, or a weld that isn't meeting required specifications, team leaders are responsible for coaching and teaching team members on how to weld properly and to specification. Another example of coaching by a team leader is when a fitter team leader directs his helper to get an item required for fitting. The record does not reflect how often team leaders coach, teach, or assist team members in improving their work quality. Opland testified that he can give employees suggestions if they are performing tasks improperly. Opland further explained that all employees have the responsibility to advise other employees if they are performing a task incorrectly. However, Opland testified that the Employer never informed him that as a team leader, he was required to inform team members of performance problems. Additionally, at a safety meeting, the Employer reminded all employees of their obligation to bring forward any safety concerns.

7. Evaluations

The superintendent performs and completes evaluations of team members every 6 months. The superintendent makes his own assessment of team members' performance but he also relies on team leaders to provide input regarding team members' abilities and productivity. For example, a team leader will provide input regarding the quality and degree of difficulty of a welder's welds and whether the welder should be advanced to a higher level of certification. High performance ratings on evaluations generally correspond to wage increases. However, team leader Opland testified that he had no role in the evaluation process. He stated that he had never been asked to provide input about an employee for whom an evaluation was being prepared. Further, Opland did not know of any other team leader who has provided input for an employee's evaluation. The Employer provided no specific examples or documentation in the record of instances when a team leader participated in the evaluation process.

8. <u>Accountability</u>

The Employer asserts that team leaders are held accountable if a team member fails to accomplish work as expected. For example, a team leader is expected to report any work quality deficiencies to the superintendent and a team leader could be questioned and/or removed from the team leader position for failing to do so. Team leaders are also subject to discipline if their team falls behind in the production process.

Opland testified that he had never been informed by the Employer that he would be held accountable if his team members failed to perform job duties assigned to them. Additionally, Opland has never been disciplined for failing to meet production goals or quality standards nor does he know of any other team leader disciplined for failing to meet production goals or quality standards. Finally, the Employer did not provide specific examples or documentation in the record of instances where a team leader was held accountable for team members' mistakes or for failing to meet production goals.

9. Management Meetings

On occasion, team leaders participate in CRT meetings so they can provide advice and/or technical knowledge or so management can apprise team leaders of difficult aspects of projects. In addition to sporadically attending CRT meetings, team leaders also occasionally attend bi-weekly production meetings. Usually, just the fabrication manager, the project manager, and other members of upper management attend production meetings but team leaders attend if a project is more complex. Team leaders do not attend production meetings if a project is routine because they know how to perform their work and direct the flow of work. Team leader Opland testified, however, that he has never attended a meeting with upper management and he knew of no other team leader who had attended a meeting with upper management.

10. Miscellaneous

According to team leader Opland, team leaders do not determine the work schedule for team members and they do not assign overtime work. Opland stated that he had no authority as a team leader to determine a team member's job classification. Moreover, the team leaders and senior team leaders are paid an hourly wage rate and complete daily timecards. While not specified in the record, a team leader may receive higher pay than a regular journeyman. Team leader Opland testified that he does not receive a higher rate of pay as team leader. Team leaders have the same lunchroom and locker room and park in the same parking lot as all other employees.

III. ANALYSIS

A. QA/QC Inspector is Appropriately Included in the Petitioned-for Unit

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends.

¹² There was some testimony that team leaders and senior team leaders were responsible for verifying that their team members filled out their time sheets correctly and recorded the proper job numbers and the number of hours they worked on specific jobs. However, team leader Opland testified that the Employer informed all employees that it was grounds for termination to even touch another employee's timecard.

¹³ Note, however, that Opland recently received a \$.50 an hour cost of living adjustment. The record is unclear if this was an across-the-board wage increase for all employees or just for team leaders.

Dezcon, Inc., 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See, e.g., Bartlett Collins Co., 334 NLRB 484 (2001); Overnite Transportation Co., 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., R&D Trucking, Inc., 327NLRB 531 (1999); State Farm Mutual Automobile Insurance Co., 163 NLRB 677 (1967), enfd. 411 F.2d 356 (7th Cir. 1969). It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. Barron Heating and Air Conditioning, Inc., 343 NLRB No. 58, slip op. at 3 (2004), citing American Hosp. Ass'n v. NLRB, 499 U.S. 606, 610 (1991); Overnite Transportation Co., 322 NLRB 723 (1996). In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, interchange of employees, contact among employees, fringe benefits, and similarities in wages, hours, benefits, and other terms and conditions of employment. See, e.g., Bashas', Inc., 337 NLRB 710 (2002) and cases cited therein. The Board has held that a plantwide unit is presumptively appropriate under the Act. Kalamazoo Paper Box Corp., 136 NLRB 134, 136 (1962).

The Board has repeatedly found quality control employees to be appropriately included in units with production and maintenance employees. See *Bennett Industries, Inc.*, 313 NLRB 1363, 1364 (1994); *Libbey Glass Division*, 211 NLRB 939, 941 and cited cases (1974). In *Blue Grass Industries, Inc.*, 287 NLRB 274, 299 (1987), the Board found that quality control employees should be included in a unit with production employees because their role is a vital part of the production process. In *The Lundy Packing Company, Inc.*, 314 NLRB 1042, 1043 (1994), the Board noted that the quality control employees are generally included in production and maintenance units when a union has requested them, finding that their placement in the same unit does not create a conflict of interest.¹⁴ On the other hand, the Board has, at times, excluded quality assurance employees where they worked in separate areas during different hours than production employees, and consulted with supervisors rather than production employees to solve problems. See *Weldun International, Inc.*, 321 NLRB 733, 751-752 (1996); *Penn Color, Inc.*, 249 NLRB 1117, 1120 (1980).

Based upon a careful review of the record evidence and analysis of relevant Board principles, I find, contrary to the Employer, that the inspector shares a community of interest with the production employees and should be included in the petitioned-for unit. This is a close case, as a number of factors militate towards excluding the

¹⁴ In that case, the Board did not include the quality control employees in the unit because the petitioner did not seek their exclusion and because they had separate supervision, were paid differently, did not interchange with the production and maintenance employees, had generally different functions, and had insubstantial and irregular contact with them. The Board's determination to exclude them, however, was reversed on appeal. 68 F.3rd 1577 (4th Cir. 1995), supplemented by 81 F.3rd 25 (4th Cir. 1996). That reversal was specifically addressed by the Board in *Overnite Transportation Co.* 322 NLRB 723 (1996).

inspector. Nevertheless, the record establishes that the inspector should be included in the production unit because the inspector's role is a vital part of the production process.

Specifically, the Employer's QA/QC program is critical to ensuring that its projects conform to contract specifications. Accordingly, the Employer requires full employee participation in its QA/QC program. The inspector is on the production floor, at both shops, monitoring the quality of the work and maintaining paperwork documenting employees' verifications that completed work conforms to required specifications. Moreover, the inspector and team leaders have the shared ability to "red tag" work deemed inadequate and to report concerns about work performance that might trigger re-education and/or corrective action. The record makes it abundantly clear that all employees are also charged with the responsibility of ensuring that completed work is done in accordance with QA/QC standards. Clearly, the inspection work of the inspector is functionally integrated into the production process, and, in fact, is a vital part of the production process. Further, the inspector regularly has contact with production employees as he monitors production and workmanship at both facilities.

Both the inspector and the production employees work the same shift. The current inspector was promoted from production and the former inspector now works production. The record indicates that the inspector received in-house training but is silent on the type of training the production employees receive.

Admittedly, the inspector makes anywhere from \$3 to \$6 dollars more than production employees. Additionally, the inspector's spouse receives health insurance while production employees' spouses are not covered by the Employer's health insurance plan. Further, production employees follow a separate chain-of-command. The inspector also has his own office while production employees do not have an office.

Despite the differences in wages, benefits, and supervision, I find that the record amply demonstrates considerable integration of the inspection process with the production process and substantial contact between the inspector and the production employees. Further, the Board generally includes quality control employees in production units when a Union has included them in the petitioned-for-unit as is the case here. See *Lundy Packing Inc.*, 314 NLRB 1042, 1043 (1994). Accordingly, the inspector shares a sufficient community of interest with production employees. I therefore find that the inspector is properly included in the petitioned-for-unit.

B. Senior Team Leaders and Team Leaders Do Not Possess Supervisory Authority and Should be Included in the Unit

Section 2(3) of the Act excludes "any individual employed as a supervisor from the definition of 'employee.'" Section 2(11) of the Act defines "supervisor" as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their

grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive, and the "possession of any one of the authorities listed in [that section] places the employee invested with this authority in the supervisory class." Ohio Power Co. v. NLRB, 176 F.2d 385 (6th Cir. 1949), cert. denied, 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. NLRB v. Kentucky River Community Care Inc., 121 S.Ct. 1861 (2001). The legislative history of Section 2(11) indicates that Congress intended to distinguish between employees who may give minor orders and oversee the work of others, but who are not necessarily perceived as part of management, from those supervisors truly vested with genuine management prerogatives. George C. Foss Co., 270 NLRB 232, 234 (1984). For this reason, the Board takes care not to construe supervisory status too broadly because the employee who is deemed a supervisor loses the protection of the Act. St. Francis Medical Center-West, 323 NLRB 1046 (1997). Thus, the burden of proving supervisory status rests on the party (i.e., the Employer herein) asserting that such status exists. Oakwood Healthcare, 348 NLRB No. 37, slip op. at 9 (2006)(citing Dean & Deluca New York, Inc., 338 NLRB 1046, 1047 (2003)). This means that any lack of evidence in the record is construed against the party asserting supervisory status. Freeman Decorating Co., 330 NLRB 1143 (2000).

Moreover, whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established. *Phelps Medical Center*, 295 NLRB 486, 490-91 (1989). Additionally, mere opinions or conclusory statements do not demonstrate supervisory status. *Chevron U.S.A.*, 309 NLRB 59 (1991); *St. Alphonsus Hospital*, 261 NLRB 620 (1982), enfd; 703 F.2d 577 (9th Cir. 1983). Rather, proof of independent judgment in the assignment or direction of employees entails the submission of concrete evidence showing how such decisions are made. *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1336 (2000); *Crittenton Hospital*, 328 NLRB 879 (1999).

Here, the Employer argues that team leaders and senior team leaders are statutory supervisors because they possess Section 2(11) authority to assign, responsibly direct, hire, transfer, discipline, evaluate and/or they posses the authority to effectively recommend such actions. Based on the analysis of the record evidence as set forth below, I find that the Employer has failed to meet its burden of demonstrating that the team leaders and senior team leaders possess and/or exercise any indicia of supervisory authority.

1. Assignment

In *Oakwood Healthcare*, the Board interpreted the Section 2(11) term "assign" to mean the act of "designating an employee to a place (such as a location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving significant overall duties, i.e. tasks to an employee." 348 NLRB No. 37 slip op. at 4. To "assign" for the purposes of Section 2(11) "refers to the ... designation of significant

overall duties to an employee, not to the ... ad hoc instruction that the employee perform a discrete task." *Id.*

Here, the record shows that the team leaders and senior team leaders are not engaged in supervisory assignment. Rather, the superintendent puts together teams and assigns tasks based on skills. Team leader Opland testified that 90% to 100% of the time he performs production work alongside fellow team members and that his job duties as a team leader have not changed from when he worked as a welder fitter.

The Employer contends that team leaders are the superintendent's eyes and ears on the floor and help the superintendent achieve his directives. The Employer further asserts that team leaders determine the best approach to completing a task and direct team members in furtherance of that goal. Additionally, the Employer contends that team leaders are charged with the ensuring that the production process determined by upper management is followed. According to the Employer, on simple, small scale projects team leaders have free reign to decide the order in which tasks are performed on their teams. The record, however, fails to specify what team leaders in fact do to help the superintendent achieve his directives.

There is simply no evidence that team leaders assign team members to places such as a location, department, or wing or that the team leaders appoint team members to work a specific time period such as a shift or overtime period. Finally, in view of the fact that the superintendent creates teams and assigns tasks, there is no evidence that team leaders actually assign specific duties to employees. While team leaders decide task order on small scale projects, there is nothing in the record establishing that this is more than ad hoc instruction to an employee to perform a discrete task on a sporadic basis.

2. Responsible Direction

As to whether the team leaders or senior team leaders responsibly direct, the analysis is whether the team leader decides what job shall be undertaken next or who shall do it. Pursuant to *Oakwood Healthcare*, the direction must be both "responsible" and carried out with independent judgment. *Id.*, slip op. at 6. For direction to be responsible, the person directing the performance of a task must be accountable for its performance. *Id.* slip op. at 6-7

As described above, team leaders sporadically decide the order of only small and simple projects. The superintendent, on the other hand, assigns tasks on a regular basis. The record lacks specific examples showing where a team leader had to choose between two team members in directing the performance of a task.

The Employer does assert that team leaders are held accountable if they fail to accomplish work as expected. For example, team leaders are expected to report any work quality deficiencies to the superintendent and any failure to do so could result in a demotion. Additionally, team leaders are subject to discipline for falling behind on

production. The record, however, lacks any specific examples of instances where team leaders were held accountable. In fact, team leader Opland testified that he had never been disciplined for failing to meet production goals or quality standards. More significantly, Opland had never been informed by the Employer that he would be held accountable if his team members failed to perform job duties assigned to them. The Board considers lack of knowledge of supervisory power relevant in determining supervisory status. See *Hale Container Line, Inc.*, 291 NLRB 1195, 1197 (1988) *enfd.* 943 f.2d 394 (4th Cir. 1991); *Jackson's Liquors*, 208 NLRB 807 (1974).

Finally, team leaders coach team members struggling with workmanship. However, the record does not reflect how often team leaders coach, teach, or assist team members. Opland testified that he was authorized to point out performance problems that team members were having; yet, Opland contends that the Employer never informed him that he had the responsibility, as a team leader, to point out problems team members were having. Additionally, under the QA/QC program, all employees are charged with the responsibility of raising quality concerns such as deficient workmanship. Based on the foregoing and the record as a whole, I find that team leaders do not possess the authority to responsibly direct employees.

3. <u>Hire, or Effectively Recommend that the Employer Hire, and/or Transfer</u>

The record evidence further fails to establish that senior team leaders and team leaders possess and/or exercise the authority to hire production employees directly. While the Employer asserted that team leaders can recommend employees be hired, there was no direct evidence showing that a team leader or a senior team leader hired or effectively recommended any applicant for hire. While there was evidence that an individual named Gabe sat in on an interview, there were no other details about the nature and extent of his participation. Moreover, the Petitioner presented evidence that the Employer was looking for applicants and encouraged all employees, irrespective of position, to recommend candidates for hire. The Board has noted that "[t]he power to effectively recommend a hire, as used in Section 2(11), contemplates more than the mere screening of applications or other ministerial participation in the interview and hiring process." *J.C. Penny Corp.*, 347 NLRB No. 11, slip op. at 3 (2006).

The record fails to show that team leaders and senior team leaders have the ability to effectively recommend transfer of team leaders. The Employer contends that team leaders advise the superintendent when they need more assistance or of when they have too many team members. However, there were no specific examples or instances showing team leaders effectively recommending transfers. Rather, the only concrete evidence is team leader Opland's testimony that he had never been involved with transferring employees or informed that he was authorized to transfer employees and that, within the last 2 weeks, the superintendent reassigned three of Opland's team members to a different team without his knowledge. Thus, the evidence shows that the superintendent, and not the team leaders, makes the decision to transfer employees. There is no evidence showing a team leader recommending a transfer and the

superintendent implementing that recommendation without further investigation or showing a team leader exercising independent judgment or discretion in making such recommendations. Accordingly, I cannot conclude that the degree of discretion involved in recommending a transfer rises above routine or clerical acts. See *Croft Metals, Inc.*, 348 NLRB No. 38, slip op. at 7 (2006).

4. Discipline

The record evidence establishes that the Employer has a progressive discipline policy. The record, however, is devoid of any actual instances in which a team leader advised either the superintendent or the fabrication manager of conduct warranting discipline. The Employer asserts that the superintendent has the authority to act on the team leader's recommendation with or without an investigation. However, the Employer's own witness, Operations Manager Parfomchuk, testified on this subject in a vague and conclusionary manner as evidenced by the fact that he had no direct knowledge regarding how often the superintendent acted directly on a team leader's recommendation versus conducting his own independent investigation.

Furthermore, there is no documentary evidence showing that team leaders issued oral warnings. Purportedly, oral warnings are reduced to writing and placed in employees' files. However, team leader Opland has never issued any disciple, including oral warnings. Additionally, Opland clearly did not know that he had the authority to issue oral warnings because he testified that he was not even sure if the superintendent had the authority to issue discipline. As noted above, the Board considers lack of knowledge of supervisory power relevant in determining supervisory status. *Hale Container Line, Inc.*, 291 NLRB 1195, 1197 (1988), *enfd.*, 943 f.2d 394 (4th Cir. 1991); *Jackson's Liquors*, 208 NLRB 807 (1974). Here, that lack of knowledge is clearly present.

There is testimony that a team leader can "red tag" insufficient work which can lead to termination or loss of certification. However, that it is one of the inspector's primary responsibilities to "red flag" work and he is not an alleged supervisor. Additionally, the record is silent regarding who issues discipline or revokes certification after an employee has received multiple red flags. In this regard, the Employer calls on all its employees to bring to the Employer's attention any deficient work and/or safety issues. In sum, there is insufficient evidence to establish that team leaders possess the authority to discipline or to effectively recommend the same.

Moreover, there is no evidence showing team leaders' recommendations to issue discipline are effective and/or accepted without an independent investigation by the superintendent with whom the authority apparently resides with respect to taking action on such alleged recommendations. See *Passavant Health Center*, 284 NLRB 887, 890-891 (1987)(finding that where oral or written reports simply bring performance issues to the employer's attention, and where an admitted supervisor independently investigates the incident and determines what discipline to issue, the purported supervisor's role is merely a reportorial function). See *Los Angeles Water & Power Employees' Assn.*, 340

NLRB 1232, 1234 (2003) (individual's report of misconduct does not constitute effective recommendation of discipline where management undertakes its own investigation and decides what, if any, discipline to impose); *Ryder Truck Rental, Inc., 326 NLRB 1386 (1998)* (authority to issue verbal or written warnings that do not affect employee status or to recommend such discipline do not evidence disciplinary authority); *Millard Refrigerated Services, 326* NLRB 1437, 1438 (1998) (employees did not effectively recommend discipline when they submitted disciplinary forms to the plant superintendent who approved them only after conducting an independent investigation; the employees exercised nothing more than a reportorial function that was typical of a "leadman" position). See also *Starwood Hotels & Resorts Worldwide, Inc., d/b/a Sheraton Universal Hotel, 350* NLRB No. 84 (2007)(finding supervisory status when a purported supervisor engaged in multiple coaching sessions prior to recommending harsh discipline that was implemented without investigation).

5. Evaluations

The Employer admits that the superintendent performs evaluations of team members every 6 months and makes his own assessment of team members' performance. The superintendent, however, consults with team leaders and requests their input regarding team members' skills. The superintendent did not testify, so the record is silent as to how much weight the superintendent accords to team leaders' Additionally, the record is devoid of specific examples of team leaders participating in the evaluation process and does not show the extent to which team leaders provide input. Team leader Opland testified that he had never provided input about an employee, and did not know of any other team leaders providing input for team members' evaluations. Moreover, the Board has found that the authority to "evaluate" is not one of the indicia of supervisory status set out in Section 2(11) of the Act. Elmhurst Extended Care Facilities, 329 NLRB 535, 536 (1999). Accordingly, "when an evaluation does not, by itself, affect the wages and/or job status of the employee being evaluated, the individual performing such an evaluation will not be found to be a statutory supervisor." Id. Providing input alone is merely a reportorial function. Here, the Employer failed to provide evidence that team leaders provided input and/or made effective recommendations that were not only followed by the superintendent but affected the wages and/or job status of the evaluated employee. Thus, there is insufficient evidence that the input provided by team leaders had any direct effect on the evaluated employees' status or tenure.

6. <u>Secondary Indicia</u>

The record establishes that, on occasion, team leaders attend CRT or production meetings. These meetings are generally only attended by upper management. Team leaders may attend to either provide technical advice or to be apprised of a difficult project. However, the record evidence fails to detail only instances where team leaders have attended these meetings. Moreover, Team leader Opland testified that he has never attended either a CRT meeting or a production meeting and knew of no other team leader attending such meetings.

The record alludes to the fact that team leaders are paid more than regular journeymen. However, the record fails to specifically state the hourly rate of pay for team leaders. Further, Opland specifically testified that he was paid the same rate of pay as a team leader as he was as a journeyman welder fitter with the exception of a cost of living adjustment. Finally, the record also reveals that team leaders use the same lunchroom, locker room, and parking lot as all other employees.

In sum, the Board only looks to secondary indicia to determine supervisory status where the possession of any one of the powers listed in Section 2(11) is not conclusively established. Sam's Club, a Division of Wal-Mart Stores, Inc., 349 NLRB No. 94 (2007). Secondary indicia includes the individual's job title or designation and authority to grant time off, Monarch Federal Savings & Loan, 237 NLRB 844, 845 (1978), enfd. 615 F.2d 1354 (3d Cir. 1980); higher compensation and the perceptions of others as to the individual's authority, General Security Services Corp., 326 NLRB 312 (1998), enfd., 187 F.3d 629 (8th Cir. 1999). Where there is no evidence that an individual possesses any one of the statutory indicia, the secondary indicia are insufficient by themselves to establish supervisory status. J.C. Brock Corp., 314 NLRB 157, 159 (1994). Here, there is no evidence establishing that the team leaders possess any of the statutory indicia of supervisory authority. Accordingly, a review of secondary indicia is irrelevant because secondary indicia are insufficient by themselves to establish supervisory status. Further, the secondary indicia in the instant matter show only sporadic attendance at management meetings and that team leaders are paid hourly, receive comparable wages to other journeymen, punch a timecard, and share non-work area facilities with all other production employees. Thus, the secondary indicia further support finding that team leaders and senior team leaders possess no supervisory authority.

IV. CONCLUSION¹⁵

With respect to the Employer's assertion that the inspector lacks a community of interest with the production employees, I find that the inspector should be included in the unit, as that position shares a sufficient community of interest.

As for the issue of the team leaders and senior team leaders' supervisory status, the Employer had the burden of establishing that the leaders' possessed supervisory authority. The Employer has not met its burden. Specifically, the Employer failed to call any witness, such as the superintendent or operations manager, that had first-hand, intimate knowledge of day-to-day operations in the production shops. The Employer also failed to provide specific examples of team leaders exercising supervisory authority. Rather, the Employer's witnesses testified in a conclusionary manner.

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¹⁵ The Employer's brief relies on record evidence and cites to Board cases setting forth general propositions on certain indicia of supervisory authority in support of its position that the senior team leaders and the team leaders possess indicia of supervisory authority. However, the Employer did not cite any cases wherein the Board found individuals to be Section 2(11) supervisors and where the facts were substantially similar to the case before me.

Moreover, the record contained not one piece of documentary evidence to bolster the Employer's assertions that team leaders exercised supervisory authority. In short, the lack of evidence in the record is construed against the Employer. *Freeman Decorating Co.*, 330 NLRB 1143 (2000). Accordingly, I find that the team leaders and senior team leaders do not possess indicia of supervisory authority as defined in Section 2(11) of the Act and that these leaders shall be included in the unit.

Accordingly, I will direct an election in the following appropriate unit ("Unit"):

All full-time and regular part-time production and maintenance employees, senior team leaders, team leaders, and the QA/QC inspector(s) employed by the Employer at its 913 Maple Street facilities and at the Skagit Industrial Park Building A1 facilities in Sedro Woolley, Washington; excluding guards, office/clerical employees, draftsmen, estimators, managerial employees, and supervisors as defined in the Act. 16

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date. employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have guit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers, AFL-CIO.

A. List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election

¹⁶ The record is not clear as to the number of employees in the bargaining unit found appropriate.

should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before **March 7, 2008**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **March 14, 2008**. The request may be filed through E-Gov on the Board's web site, www.nlrb.gov, but may not be filed by facsimile. 17

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To file a request for review electronically, go to www.nlrb.gov and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name

DATED at Seattle, Washington, this 29th day of February, 2008.

Anne Pomerantz, Acting Regional Director National Labor Relations Board, Region 19

2948 Jackson Federal Building

915 Second Avenue

Seattle, Washington 98174

and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, www.nlrb.gov.